

OCT 12 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

JOHN F. CORCORAN, CLERK
BY DEPUTY CLERK
[Signature]

MICHAEL BERNIER, et al.,

Plaintiffs,

v.

COLUMBIA GAS TRANSMISSION
CORPORATION,

Defendant.

CIVIL ACTION No. 3:05CV00011

ORDER

JUDGE NORMAN K. MOON

Before the Court is the United States Magistrate Judge's Report and Recommendation of July 15, 2005 on the Plaintiffs' Motion to Remand and the Defendant's Motion to Dismiss filed pursuant to FED. R. CIV. P. 12(b)(6). The Report also addresses the Plaintiffs' verbal motion to voluntarily dismiss Count Four of their complaint. The Magistrate's Report recommends that this Court deny the Plaintiffs' Motion to Remand, deny the Defendant's Motion to Dismiss, grant the Plaintiffs' verbal motion to voluntarily dismiss Count Four, and dismiss Count Four. On July 25, 2005, the Defendant filed timely objections to the Report's recommendation that its Motion to Dismiss be denied. This Court has performed a *de novo* review of the portions of the Magistrate's Report to which the Defendant has objected. *See* U.S.C. § 636(b)(1)(C) (West 1993 and Supp. 2000); FED.R.CIV.P. 72(b).

Having thoroughly considered the entire case, all relevant law, and for the reasons stated in the accompanying memorandum opinion, it is hereby

ADJUDGED ORDERED AND DECREED

as follows:

1. The Magistrate's Report and Recommendation of July 15, 2005 shall be, and it hereby is, ACCEPTED IN PART and REJECTED IN PART;
2. The Plaintiffs' Motion to Remand, filed April 1, 2005, shall be, and it hereby is, DENIED;
3. The Plaintiff's verbal motion to dismiss Count Four of the complaint shall be, and it hereby is, GRANTED;
4. Count Four of the complaint shall be, and it hereby is, DISMISSED;
5. The Defendant's Objections to the Report and Recommendation are SUSTAINED;
6. The Defendant's Motion to Dismiss, filed March 2, 2005, shall be, and it hereby is GRANTED as to Counts One through Three;
7. This action shall be, and it hereby is, DISMISSED. This dismissal is without prejudice with respect to the Plaintiffs' alternative claim for damages in Count One;
8. This action shall be, and it hereby is, STRICKEN from the docket of this Court.

The Clerk of the Court hereby is directed to send a certified copy of this Order to all counsel of record and to Magistrate Judge Crigler.

ENTERED:

Dawn E. Moon
United States District Judge

10/12/05
Date